



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Mr. Adam Anderson  
Assistant County Attorney  
County of Montgomery  
501 North Thompson, Suite 300  
Conroe, Texas 77301

OR2016-28302

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 639055 (ORR File No. 16PIA542).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case file. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted audio and video recordings. To the extent any other information responsive to the request existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. You assert the submitted video recording contains motor vehicle record information that is excepted from disclosure under section 552.130. Upon review, we find the submitted video recording contains confidential motor vehicle record information. In this instance, you state the sheriff's office does not possess the technological capability to redact information from video files. Thus, we agree the sheriff's

office must withhold the video recording in its entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.<sup>1</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Upon review, we find the public citizen’s date of birth you have indicated within the submitted audio recording is subject to section 552.101 of the Government Code in conjunction with common-law privacy. You also state the sheriff’s office does not have the technological capability to redact the date of birth from the audio recording. However, because the sheriff’s office had the ability to copy the submitted audio recording for our review, we believe the sheriff’s office has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the sheriff’s office must withhold the public citizen’s date of birth you have indicated within the submitted audio recording under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff’s office must withhold the video recording in its entirety under section 552.130 of the Government Code. The sheriff’s office must withhold the public citizen’s date of birth you have indicated within the submitted audio recording under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must release the remaining information.<sup>2</sup>

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<sup>1</sup>Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

<sup>2</sup>We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the sheriff’s office receives another request for the same information from a different requestor, the sheriff’s office must again seek a decision from this office.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/som

Ref: ID# 639055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)